

My opinion, however, is, that there is sufficient evidence in the record, to disprove the receipt, independent of the evidence of Mr. Williamson. In the first place, his pecuniary condition at the time, pressed as he obviously was to command resources to sustain the credit of his commercial firm, then struggling with difficulties which subsequently overwhelmed it. His anxiety and efforts to borrow money upon almost any terms for this purpose, render it in the highest degree improbable, that he could, or would, have been willing to advance this large sum upon a mortgage not then paid, and when he was under no obligation to do so. In the second place, it is clear, upon the face of the account settled by him in the Orphans Court, and upon the testimony of Mr. Glocken, the deputy register, that the release was a mere matter of form, to enable the executor to close the matter in the court. And in the third place, the declarations made by the executor to Glocken, show, I think, very satisfactorily, that the money was not in fact paid. It is evident, from these declarations, that Mr. Williamson supposed he was, as husband, entitled to retain the balance appearing to be due from him as executor. That this impression continued down to the period of the execution of the release, is evident from declarations made by him to the witness at that time, as appears from the cross examination; because, as stated by the witness, Mr. Williamson reiterated to him, when the account was settled, his belief that the release was not necessary, and that he was not bound to obtain it, in order to settle his account. These declarations, then made, may, I think, fairly be regarded as part of the *res gestæ*, and, with the other circumstances, are sufficient to raise a strong presumption that the money was not paid. The release and the account were filed and passed on the same day, and were part and parcel of one and the same transaction; and statements made by the executor at that time should be received, to show its true nature and character. Suppose, instead of making these verbal statements, Mr. Williamson had left with the deputy of the register, a writing to the effect that he had not actually paid the money to his wife, and had merely procured from her the